*THE HONOURABLE SRI JUSTICE V.V.S.RAO

+WRIT PETITION No.22002 of 2005

%25-10-2005

M.A.Azeem Baig, S/o late M.A.Kareem Baig,

R/o Lalapet, Guntur.

..PETITIONER

Vs.

$ The Chief Executive Officer, A.P.State Wakf Board,

Haz House, Opp.Public Gardens, Nampally,

Hyderabad and others.

..RESPONDENTS

! COUNSEL FOR PETITIONER: Mr.B.V.S.Sivaram Prasad

^ COUNSEL FOR RESPONDENTS: Standing counsel for A.P.Wakf Board, Mr. K.Rama Kanth Reddy

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>HEAD NOTE:

?CASES REFERRED:

1. AIR 1987 SC 943
2. (2004) 3 SCC 440

THE HON'BLE SRI JUSTICE V.V.S.RAO

WRIT PETITION NO.22002 OF 2005

DATED 25.10.2005

M.A.Azeem Baig, S/o late M.A.Kareem Baig,

R/o Lalapet, Guntur.

…Petitioner

and

The Chief Executive Officer, A.P.State Wakf Board,

Haz House, Opp.Public Gardens, Nampally,

Hyderabad and others.

…Respondents

THE HON'BLE SRI JUSTICE V.V.S.RAO

WRIT PETITION NO.22002 OF 2005

ORDER:

The petitioner is Mutawalli of a Mosque in Lalapet area of Guntur. By an order dated 27.07.2005, the first respondent placed the petitioner under suspension under Section 64(5) of the Wakf Act, 1995 (the Act, for brevity) pending the enquiry into certain allegations under Section 64(3) of the Act. The third respondent herein was appointed as enquiry officer. The petitioner filed W.P.No.12753 of 2005 challenging the comprehensive order of suspension and initiation of enquiry. By an order dated 17.06.2005, this Court invalidated the proceedings of the first respondent dated 27.07.2005 on the ground that Chief Executive Officer (CEO) of A.P.State Wakf Board (Wakf Board, for brevity) is not competent to initiate enquiry and place the Mutawalli under suspension. The order of the learned single Judge was the subject matter of the writ appeal being W.A.No.1377 of 2005 at the instance of respondents 1 and 2 herein. This Court, by order dated 29.07.2005 disposed of the writ appeal observing that the competent authority can always pass an order suspending the

Mutawalli pending enquiry. Thereafter, proceedings were issued on 09.09.2005 placing the petitioner under suspension duly appointing the third respondent as enquiry officer under Section 64(3) of the Act. The third respondent thus issued show cause notice on 15.9.2005 calling upon the petitioner to submit explanation within seven days from the date of receipt of said notice as to why action should not be taken against him under Section 64(5) of the Act. These two orders are assailed in the writ petition.

The learned counsel for the petitioner, Sri B.V.S.Sivaram Prasad, submits that the impugned order is contrary to the orders passed by this Court in the earlier writ petition and writ appeal, and that the first respondent issued the same proceedings which was set aside by this Court without there being any valid order by Wakf Board. He would also urge that the charges framed against the petitioner are baseless and CEO has no power either to remove or suspend Mutawalli under Section 64(1) or Section 64(5) of the Act.

Per contra, the learned standing counsel for A.P.Wakf Board, K.Rama Kanth Reddy, submits that this Court while disposing of the writ petition and writ appeal left open the question to be considered by the Special Officer of the Wakf Board, and that the decision is taken by the Special Officer to initiate enquiry and place the petitioner under suspension. He has placed the original record before this Court in support of the contention that the note was circulated to the Special Officer and the draft order was also placed before the Special Officer, which was later issued by the CEO. According to the learned counsel, the CEO, the first respondent herein, only issued the proceedings of A.P.Wakf Board and the same does not in any manner suffer from lack of competency and jurisdiction. Secondly, the learned standing counsel would contend that any order or decision passed by Wakf Board/Special Officer/CEO under the Act or the Rules made thereunder is amenable to the jurisdiction of A.P.State Wakf Tribunal under Section 83(2) of the Act and the dispute between Mutawalli and Wakf Board being a dispute under Section 6 of the Act, the petitioner has an effective alternative remedy and approach the Tribunal after completion of enquiry and after a decision is taken by the competent authority. Lastly, he contends that in a preemptive manner, the petitioner cannot approach this Court especially when the order is passed in accordance with law and in accordance with the observations made by this Court.

The petitioner has challenged two orders. One, (which is dated 09.09.2005) suspending the petitioner for a period of ten days pending enquiry by third respondent under Section 64(3) of the Act. The second, (order dated 15.09.2005) is a notice calling upon the petitioner to submit explanation to the charges mentioned therein. As the first order is a suspension order for a period of ten days, and such period of ten days expired on 20.09.2005, it would not be proper for this Court to adjudicate the question whether the competent authority is justified in placing the petitioner under suspension. Insofar as the second order dated 15.09.2005 is concerned, the same is a show cause notice and ordinarily a show cause notice cannot be a subject matter of writ petition. It is axiomatic that the writ petition would not lie against the show cause notice. (See **State of Uttara Pradesh v Shri Brahma Datta Sharma** and **Special Director v Mohd.Ghulam Ghouse**). Further, as rightly

pointed out by the learned standing counsel for Wakf Board, any order and decision of any authority under the provisions of the Act or Rules can be subject matter of "application" referred to in sub-section (2) of Section 83. The decision of the Tribunal on an "application", shall be final and under the proviso to sub-section (9) of Section 83 of the Act, aggrieved person is given a right of revision before this Court on limited grounds. Therefore, if, at the stage of show cause notice issued under Section 64(5) of the Act, this Court interferes, it would amount to denying other remedies available to the aggrieved person or opposite parties. In a matter of removal or suspension of Mutawalli, the aggrieved person cannot straight away approach this Court by filing a writ petition. He should await the final decision by the competent authority and/or Wakf Board and then approach the Tribunal for redressal in the first instance. It is only thereafter that the jurisdiction of this Court is attracted in an appropriate case.

The brief reasons in the above paragraph would have been suffice to give appropriate disposal to the writ petition on hand. However, it is strenuously contended by the learned counsel for the petitioner that the first impugned order was not passed by the Wakf Board or Special Officer and therefore the same being one without jurisdiction and incompetent, a writ petition is not barred. This Court, therefore, proposes to consider this aspect of the matter.

A perusal of the order of the learned single Judge in W.P.No.12753 of 2005 filed by the petitioner would show that the earlier order of suspension dated 27.05.2005 was challenged only on the ground that the CEO is not competent to pass the order. For the Wakf Board, it was contended that as per the directions and instructions of the Special Officer alone, the CEO passed the order of suspension. In the said writ petition, the CEO was arrayed as first respondent and Special Officer as second respondent. After referring to the relevant provisions, the learned single Judge observed as under.

> The provision clearly and unequivocally consecrates the power and discretion to place a Mutawalli under suspension pending enquiry in the Wakf Board. It is the 2nd respondent who is appointed as a Special Officer of the A.P.State Wakf Board as the Wakf Board was superceded by the State. Therefore, it is the 2nd respondent who could exercise the power of the Wakf Board. Section 64(3) of the Act neither expressly nor by any necessary compelling implication enables the Wakf Board or the 2nd respondent acting as the Wakf Board to delegate such powers and discretion as are exclusively consecrated in the Wakf Board to any other authority including the 1st respondent. The learned standing counsel for the Wakf Board does not contend that there was any such delegation either. In the circumstances, the 2nd respondent acted incompetently in directing the 1st respondent to suspend and enquiry into the allegations against the petitioner. Such an entrustment, in the statutory context above, amounts to abdication, an abdication that is prohibited by the extant and specific provisions of the Wakf Act, 1995. The impugned order thus and on this singular ground invites invalidation. It is accordingly set aside. **It is however open to the 2nd respondent to itself exercise the powers and discretion without abdicating it and exercise such power in accordance with law**.

(emphasis supplied)

Before the Division Bench, it was the submission on behalf of CEO and Special Officer that letter gave instructions to former to pass orders. The Division Bench did not accept this and while giving liberty to competent authority to pass appropriate orders, writ appeal was disposed of observing as under.

> Learned single Judge has allowed the writ petition on the ground that the authority, which has placed the writ petitioner under suspension, had no power to do so.
>
> It is submitted that the second respondent in the writ petition had the authority to suspend the writ petitioner pending enquiry, but this power was exercised by the first respondent in the writ petition on the instructions of the second respondent. There is nothing in the impugned order, which would suggest that this order had been passed on the instructions of the second respondent. **In any case, if the appellants feel that the writ petitioner has to be placed under suspension, the competent authority can always pass such an order after complying with the provisions of law**.

(emphasis supplied)

The learned standing counsel for Wakf Board has placed before this Court a copy of the Notification issued by the Government of Andhra Pradesh vide G.O.Ms.No.26, Minorities Welfare Department, dated 13.12.2004. The same was issued under Section 99(2) of Wakf Act appointing the Additional Director General, Vigilance & Enforcement as Special Officer to Wakf Board to exercise and perform all powers and duties of the Wakf Board. Therefore, in the absence of the State Wakf Board, Special Officer is competent to exercise all powers and functions of the Wakf Board. This position, as seen from the observations made in the earlier writ petition by the single Judge as well as Division Bench – is not disputed nor can be denied. The question, therefore, is whether Special Officer has taken a decision to place the petitioner under suspension pending enquiry under Section 64(3) of the Act?

The file bearing No.08/DCB/D3/GNT/02-Supply is placed before this Court along with note file. On 11.08.2005, the Office of Wakf Board put up a note giving brief history of the case (and also extracting the entire order of the Division Bench dated 29.07.2005), and proposing to place the petitioner under suspension under Section 64(5) of the Act for a period of ten days pending enquiry as there are charges of misappropriation of funds of the Mosque. The first respondent herein made an endorsement dated 11.08.2005 to the effect that the proposal may be approved and submitted the file to the Special Officer, the second respondent herein. On 12.08.2005, the second respondent while directing the Wakf Board to furnish reasons for suspension also directed to put up a draft presumably draft for approval. On 05.09.2005, the CEO again submitted a note giving reasons for placing the petitioner under suspension along with the draft proceedings. The Special Officer on 05.09.2005 approved the office note and also the draft proceedings. This Court has perused the note file as well as the draft proceedings and other relevant documents

in the file, which would clinchingly show that the decision to place the petitioner under suspension pending enquiry was in fact taken by the Special Officer of Wakf Board. On the ground that the CEO is not competent to pass orders, therefore, the impugned proceedings cannot be invalidated. This Court is also unable to countenance the submission of the learned counsel for the petitioner that the impugned order in this writ petition is contrary to the order of the learned single Judge and Division Bench in the earlier writ petition/writ appeal.

Though this Court has perused the charges as contained in the impugned proceedings as mentioned in the second impugned order dated 15.09.2005, this Court refrains from making any comment on the charges as the matter is still at the stage of enquiry and as observed above, the petitioner can always agitate any adverse decision or order that may be passed by the competent authority before the A.P.State Wakf Tribunal under Section 83(2) read with Section 6 of the Act. This Court, be it made clear, has not gone into merits of the charges and it is for the enquiry officer and competent authority to record findings on the charges.

Lastly, the learned standing counsel made a request to extend the time for submitting explanation to the show cause notice dated 15.09.2005. This Court, while ordering Notice Before Admission on 07.10.2005 directed the petitioner to submit explanation on or before 21.10.2005. Though this Court has categorically directed the petitioner to submit explanation by 21.10.2005, it is unfortunate the petitioner has not submitted any explanation. Therefore, if the third respondent has not submitted any enquiry report so far, the petitioner is directed to submit explanation by 02.11.2005 failing which it shall be open to respondents 1 to 3 to proceed in any manner as per law.

For the above reasons, subject to the above observation, the writ petition is accordingly dismissed. No costs.

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(V.V.S.RAO,J)

.10.2005.

pln

Note: LR copy be marked.

(By order)

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